IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9053 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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EXECUTIVE ENGINEER ROADS & BUILDING (DIV-II) - Petitioner(s)

Versus

BALUBHAI DEVABHAI PATEL & 1 - Respondent(s)

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Appearance :

MR DC DAVE for Petitioner(s) : 1,
MR DJ BHATT for Respondent(s) : 1,
DELETED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 23/12/2005

CAV JUDGMENT

1.By filing this petition under Article 226/227 of the Constitution of India, the petitioner has prayed to quash and set aside the judgment and order dated

11.7.1997 passed by the Presiding Officer, Labour Court, Navsari in Reference (LCN) No. 7 of 1996, by which the Labour Court has directed the petitioner to reinstate the respondent – workman on his original post and also directed the petitioner to pay 50% back wages for the intervening period.

2. It appears from the record that the reference under Section 10(1)(c) of the Industrial Disputes Act, 1947 was made by the respondent – workman to the Labour Court on the ground that services of the respondent – workman were terminated by the petitioner without following due process of law. The said reference came to be registered and numbered as Reference (LCN) No. 7 of 1996 in the Labour Court, Navsari. The Labour Court, Navsari, after appreciating the evidence on record and hearing the respective parties, by judgment and order dated 11.7.97, allowed the said reference and directed the petitioner to reinstate the respondent – workman in service and also directed the petitioner to pay 50% back wages for the intervening period from June, 1984.

3. Being aggrieved and dissatisfied with the aforesaid judgment and order dated 11.7.1997 passed by the Presiding Officer, Labour Court, Navsari in Reference (LCN) No. 7 of 1996, the petitioner has preferred the present petition under Article 226/227 of the

Constitution of India for the aforesaid relief.

4. It is submitted by the learned advocate appearing for the petitioner that there is an error apparent on the face of the record inasmuch as there exists sufficient material on record to prove that the respondent – workman willfully refrained from reporting from duty as a daily wager and as a result thereof, there was no question of termination of services of the respondent – workman without following due procedure of law. He submitted that there is a delay in initiating the proceedings before the Labour Court as contemplated under the Industrial Disputes Act and this very conduct on the part of the respondent would go to show that the respondent was not at all interested in the services as a daily wager and as a result thereof, he did not report for duty as a daily wager. He, therefore, submitted that when the conduct of the respondent – workman clearly shows that the respondent voluntarily stopped reporting for duty as a daily wager, the question of respondent – workman being not provided work despite his willingness by the petitioner and despite the availability of the work in the set up of the petitioner does not arise at all. He submitted that the respondent – workman was gainfully employed in the company named N.S.P. /& Paper Products Private Limited

and, therefore, the Labour Court ought not to have awarded 50% back wages in favour of the respondent – workman. He submitted that the provisions of Section 25(F) of the Act are not applicable to the facts of the present case and, therefore, the learned Presiding Officer, has absolutely erred in computing 240 days as contemplated under the provisions of Section 25(b) of the Act interalia for the purpose of invoking the application of Section 25(F) of the Act. It is, therefore, requested to allow the present petition.

5. On the other hand, Mr.D.J.Bhatt, learned advocate appearing on behalf of the respondent – workman has opposed this petition and has tried to justify the order passed by the Presiding Officer, Labour Court, Navsari in Reference (LCN) No. 7 of 1996. He submitted that the respondent – workman has completed 240 days and, therefore, without following due process under the Act, the services of the respondent – workman has been terminated. He submitted that the Labour Court, after appreciating the evidence on record, has come to the conclusion that there is a breach of provisions of Section 25(F) of the Act, this Court may not reappreciate the evidence on record in a petition under Article 227 of the Constitution of India. He, therefore, submitted to dismiss the present petition.

6. Heard the learned advocates for the parties and perused the material placed on record.

7. It can be seen from the record that the Labour Court has come to the conclusion that there is a breach of the provisions of Section 25(F) of the Act and without following the provisions of Section 25(F) of the Act, the services of the respondent – workman has been terminated though the respondent – workman has completed 240 days in a year. It can also be seen from the record that the Labour Court has also come to the conclusion that the respondent – workman was working with the company N.S.P., and/or Paper Products Private Limited. When the Labour Court has specifically come to the conclusion that the respondent – workman is working with N.S.P. , and/or Paper Products Private Limited, in my view, the Labour Court ought not to have awarded 50% back wages in favour of the respondent – workman since he was gainfully employed. It is also required to be noted that the Labour Court, after appreciating the evidence on record, has come to the conclusion that there is a breach of the provisions of Section 25(F) of the Act, this Court cannot reappreciate the evidence on record in a petition under Article 227 of the Constitution of India. In this view of the matter, the petition is partly allowed. The petitioner is directed

to reinstate the respondent – workman on his original post as a daily wager. It is also held that the respondent – workman is not entitled for the back wages as awarded by the Labour Court, Navsari by order dated 11.7.97 in Reference (LCN) No. 7 of 1996 since the respondent workman is gainfully employed. Rule is made absolute to the aforesaid extent. No costs.

(SHARAD D DAVE, J)

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